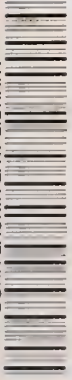


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LIBERAL DEMOCRACY AND ITS CRITICS:

LAW AND LIBERALISM II

Faculty of Law, 209S

Department of Political Science 400Y

Spring, 1988

Professor Jennifer Nedelsky

EVALUATION

Class Participation (including weekly comments): 30%

Fifteen page paper: 70%

REQUIRED READING

All reading is included in the packet for sale at the Law School Book Room.

REQUIREMENTS

As in the first term, students will be required to prepare a one page comment on the reading (typed or written in black ink) which is to be turned into Room 342 Flavelle House, Faculty of Law at 9:00 A.M. each Friday. The comments should discuss the most interesting contributions the author makes to the issues of the nature, function, or significance of the common law. You should try to comment on what the author's arguments tell us about the validity of the conceptions of the common law underlying liberal theory. Each student will have two "grace weeks" in which she/he need not write a comment.

The final, fifteen page paper is due for Political Science undergraduates April 18, 1986, for Law students, April 29th.

There will be no penalty, as such, for exceeding the page limits for the papers. However, clarity and conciseness of the argument will be an important factor in the grading. A tightly argued paper will get a better grade than a long, diffuse one that takes twice as long to make the same points.

Late papers will be penalized one third of a grade if the paper is turned in one or two days late, two-thirds of a grade if it is 3 or 4 days late, a full grade if the paper is turned in on the fifth or sixth day after the deadline. Each day, including Saturday and Sunday, counts as one day. After the sixth day, law students will be referred to the Course Approval Committee if they need an additional extension.

SCHEDULE

Please note that the schedule for classes reflects the fact that the course is offered through both the Faculty of Law and the Political Science Department. There will be no class on February 19, since that is reading week for Political Science, and no class on March 11, since that is reading week for the law school. In addition, there will be no class January 29. There will, however, be reading assigned for that day.

WEEK 1,
Jan. 15 Peter Gabel and Jay M. Feiman, Contract Law as Ideology, in The Politics of Law - A Progressive Critique, David Kairys, ed. New York: Pantheon Books 1982

Trebilcock, "The Doctrine of Inequality of Bargaining Power" in "Duress and Unconscionability", Ch. 4 in The Economics of Contract Law, Anthony T. Kronman and Richard A. Posner, eds. Toronto: Little, Brown, and Co., 1979, pp. 67-107.

Robert W. Gordon, draft paper "Some Speculations on American Contract Law as a Legal and a Social Form".

WEEK 2,
Jan. 22 Patrick S. Atiyah, "The Intellectual Background 1770-1870 - II", pp. 324-344, Freedom of Contract in the Courts, 1770-1870 - I, pp. 398-454 in The Rise and Fall of Contract, Clarendon Press, Oxford, 1979.

WEEK 3,
Jan. 29 Class will not meet. Read: "The Public-Private Distinction in American Law and Life" by Elizabeth Mensh and Allan Freeman, and Elizabeth Mensh, "Contract Law as Ideology." We will be referring to these readings off and on throughout the course.

WEEK 4,
Feb. 5 John P. Dawson, "Economic Duress: An Essay in Perspective" 45 Michigan Law Review pp. 253-290 (1947) Review for comparison Trebilcock from first week.

WEEK 5,
Feb. 12 Morton J. Horwitz, "The Subsidization of Economic Growth," in Ch. VI of The Transformation of American Law, Harvard University Press, Cambridge, Mass. and London, England, 1977.

Richard A. Epstein, "The Social Consequences of Common Law Rules", Vol. 95, Harvard Law Review, pp. 1717-1751.

February 19 Reading Week

WEEK 6,
26 Robert Gordon, "Critical Legal Histories" Stanford Law Feb.
Review 36, 1984 as edited by Allan Hutchinson in Critical
Legal Studies.

Week 7,
March 4 Dworkin, "Hard Cases" from Taking Rights Seriously.

March 11 Reading Week

WEEK 8,
March 18 Stewart Macaulay, "Non-Contractual Relations in Business: A
Preliminary Study" in 28 American Sociological Review
(1963), pp. 55-69.

Stewart Macaulay, "An Empirical View of Contract", Wisconsin
Law Review, 1985, pp. 465-482.

WEEK 9,
March 25 Ian R. MacNeil, "Relational Contract: What We Do and Do Not
Know" in Wisconsin Law Review, 1985, pp. 483-525.

Robert W. Gordon, "Macaulay, MacNeil, and the
Discovery of Solidarity and Power in Contract
Law, in Wisconsin Law Review, 1985, pp.
565-579.

WEEK 10,
April 1 David Vaver, "Unconscionability: Panacea, Analgesic or Loose
Cannon?"

C.B. MacPherson, "The Rise and Fall of Economic Justice"

WEEK 11,
April 1 Clare Dalton, "An Essay in the Deconstruction of Contract
Law" and Roberto Unger, "The Critical Legal Studies
Movement" as edited by Allan Hutchinson in Critical Legal
Studies.

